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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

KEITH HUGH JENSEN,

Defendant and Appellant.

C090015

(Super. Ct. No. 16FE014348)

As part of a negotiated agreement, defendant Keith Hugh Jensen pled no contest to one count of attempted criminal threats and admitted a prior conviction for spousal rape. Defendant's sole contention on appeal is that the trial court erred in requiring him to pay restitution of \$9,000 for the two months of paid vacation that the domestic violence victim had lost. We will affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Following an incident of domestic violence, defendant was charged with infliction of corporal injury resulting in a traumatic condition, unlawful taking or driving of a vehicle, first degree burglary, and criminal threats. It was further alleged as to the domestic violence charge, defendant personally inflicted great bodily injury. It was also

alleged that he had two prior serious felony convictions. Finally, it was alleged that defendant had served nine separate prior prison terms.

Following his plea, the trial court sentenced defendant to state prison for an aggregate term of seven years.

After a restitution hearing, pursuant to Penal Code¹ section 1202.4, defendant was ordered to pay restitution to the domestic violence victim in the amount of \$21,621.86, which included \$9,000 for two months of paid vacation that the victim had lost. As a result of defendant's conduct, the victim missed two months of work because she was physically unable to perform her duties. Her employer paid her salary of \$4,500 per month during those two months but required her to give up two months' paid vacation over the next two years as compensation for her absence. Defense counsel objected to any order of restitution for lost wages, arguing, "if she was being paid[,] she doesn't have lost wages." The trial court nevertheless awarded the victim \$9,000 as compensation for two months of vacation time because she was entitled to take the vacation time and was unable to take it as a result of her injuries.

DISCUSSION

Defendant contends that section 1202.4, subdivision (f) does not provide for reimbursement of vacation time "where her employer admitted paying her monthly salary at all times" and "the \$9,000 award by the trial court represented an undeserved 'windfall' to [the victim], since she never lost any of her salary at any time after the crime." We disagree.

The California Constitution provides that crime victims have a right to receive "restitution from the persons convicted of the crimes causing the losses they suffer." (Cal. Const., art I, § 28, subd. (b)(13)(A).) Section 1202.4 implements this constitutional

¹ Further undesignated code references are to the Penal Code.

mandate and requires full victim restitution in criminal cases, so as to make the victim whole. (§ 1202.4, subd. (f); see *Luis M. v. Superior Court* (2014) 59 Cal.4th 300, 305.) Subdivision (f)(3) of section 1202.4 provides, in relevant part, that “in every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court,” and that the restitution order “shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant’s criminal conduct.” Such economic losses may include the loss of employee benefits such as sick leave. (*In re K.F.* (2009) 173 Cal.App.4th 655, 665-666.)

We review a restitution order for abuse of discretion. (*People v. Baker* (2005) 126 Cal.App.4th 463, 467.) The right to restitution is to be broadly and liberally construed. (*Ibid.*) A trial court “may use any rational method of fixing the amount of restitution as long as it is reasonably calculated to make the victim whole.” (*Id.* at p. 470.) “When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.” (*People v. Dalvito* (1997) 56 Cal.App.4th 557, 562.)

The trial court reasoned that because the victim was required to give up two months’ paid vacation over the course of two years as compensation for her two months’ absence, she suffered an economic loss compensable by restitution. Defendant contends that if the victim “entered into an agreement with her employer not to take her usual vacation in order to compensate him for the extended loss of her services, she did so as an independent act for which the trial court should not hold [defendant] accountable.” We disagree. Ordering defendant to compensate the victim for paid vacation time she was required to forfeit for the time she was unable to work due to her injuries does no more than “make the victim whole.” (*People v. Baker, supra*, 126 Cal.App.4th at p. 470.) Paid

leave has an economic value and the victim's inability to use that paid leave as a consequence of defendant's criminal conduct reasonably falls within any "economic loss" set forth in section 1202.4, subdivision (a)(1). There was a factual and rational basis to award the victim compensation for the vacation time she lost.

Further, we are not persuaded by defendant's reliance on *People v. Friscia* (1993) 18 Cal.App.4th 834. In *Friscia*, the trial court awarded the victims restitution for the time they spent investigating the case to aid the sheriff's department. (*Id.* at p. 836.) But, as the appellate court found, "[w]hile the considerable time spent on the accounting took away from [the victims'] duties . . . , there is no evidence in the record that it reduced their salary or profit." (*Ibid.*) This case is distinguishable on its facts from the case at hand where the record does provide evidence that the victim suffered an economic loss in the form of her leave time. (See *In re K.F.*, *supra*, 173 Cal.App.4th at p. 666 [reasoning that the victim's depletion of leave time is a "valuable right which [the victim] lost as a direct result of [the defendant's] conduct"].)

We conclude that the trial court's imposition of restitution based upon the economic value of the paid vacation time the victim lost is well within the trial court's discretion. (*People v. Baker*, *supra*, 126 Cal.App.4th at p. 467.)

DISPOSITION

The judgment is affirmed.

/s/ _____,
Robie, Acting P. J.

We concur:

/s/ _____
Duarte, J.

/s/ _____
Hoch, J.